

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

SAGE SCHMIDT, A Minor, )  
By and Through Doran )  
Schmidt, her natural mother )  
and Next Friend, and DORAN )  
SCHMIDT, Individually, )  
 )  
Plaintiffs, ) 8:13CV143  
 )  
vs. )  
 ) Omaha, Nebraska  
THE BELLEVUE MEDICAL ) July 8, 2015  
CENTER, LLC, )  
 )  
Defendant. )

TRANSCRIPT OF THE COURT'S RULING  
BEFORE THE HONORABLE LAURIE SMITH CAMP  
CHIEF UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFFS: Mr. Patrick J. Cullan  
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Proceedings recorded by mechanical stenography, transcript  
produced with computer.

1 (Proceedings held but not transcribed.)

2 THE COURT: Thank you.

3 Well, I'm going to go ahead and rule because I want all  
4 of you to be able to take the time that you need to get  
5 prepared for the trial in this case.

6 Yes, as noted, of course the plaintiff does have the  
7 burden of proof. And after listening to the testimony of the  
8 two doctors, Dr. Glass and Dr. Gubernick, I am not persuaded  
9 to change my opinion regarding the admissibility of the  
10 opinion of Dr. Glass.

11 I do not believe that his opinion that we've been  
12 referring to as CCIE satisfies the *Daubert* standards. I do  
13 not believe that, first of all, that it can be tested. Of  
14 course, there are reasons why it can't be tested. I don't  
15 fault anybody for that.

16 It has not really been subjected to peer review, although  
17 he said that it has been discussed in the abstract for  
18 hundreds of years and that there are different peer-reviewed  
19 publications that provide the building blocks or the  
20 foundations for his theory. The theory itself is not peer  
21 reviewed, nor is it generally accepted. And there is no  
22 potential rate of error.

23 So I do not change my opinion regarding the admissibility  
24 of Dr. Glass's testimony, and he will not be allowed to  
25 testify.

1           Also, I will just note that he really had no ability to  
2           link any alleged standard of care or breach of standard of  
3           care with his theory. His theory is essentially that the  
4           natural forces of labor, particularly if they are intensified  
5           through a stimulant such as Pitocin, and particularly if labor  
6           is prolonged, will cause uterine pressure on the fetal skull  
7           obstructing the flow of blood to the fetus's brain. And I do  
8           not think that his opinion will be helpful to the jury in  
9           reaching any fact that it needs to reach in this case.

10           With regard to the testimony of Dr. Gubernick, although  
11           there may be substantial disagreement with his illustration of  
12           the hammer and the peg and the hole -- and I can entertain  
13           objections to that at a later time -- his theory that the  
14           disproportion of the maternal pelvic structure and the baby's  
15           head leading to a dystocia can cause compression and trauma to  
16           the head before the actual birth process appears to be  
17           persuasive.

18           And I believe that Dr. Smith actually acknowledged that  
19           yes, indeed, that type of thing can happen, and that is fairly  
20           described as trauma.

21           So I will make one modification to my order of May 27,  
22           2015, which appears at filing number 195. And on page 10, in  
23           paragraph 2(b), in the last two full lines of the paragraph, I  
24           will strike the words, "or in-utero fetal head compression or  
25           trauma". Those words are stricken.

1           Now, so that we can accomplish even a little more today  
2           to help you in your efforts to be ready for trial or  
3           discussions, if you want to have discussions among yourselves,  
4           I am going to rule on other pending motions in limine.

5           I note that the defendant has a motion in limine pending  
6           at filing number 202. And that was briefed and submitted on  
7           June 12, 2015. The time for the plaintiffs' response has  
8           expired sometime back, and I haven't received any response.

9           So I am actually going to grant the defendant's motion in  
10          limine that appears at filing 202 in its entirety with the one  
11          modification I am giving you right now on the record.

12          On page 2, bullet point number 2, where the defendant  
13          refers to the matter we're discussing right now, per my prior  
14          order of the Court, that will now read: Testimony from the  
15          plaintiffs' expert witnesses Stephen Glass, MD, and Martin  
16          Gubernick, MD, per the order of this Court. So there is no  
17          question about what the order of this Court indeed is.

18          With regard to the plaintiffs' motion in limine that  
19          appears at filing number 201, the defendants did respond. And  
20          regarding many of the issues that are raised in plaintiffs'  
21          motion in limine, the defendant does not have any objection.

22          So I am granting the following paragraphs of filing  
23          number 201: Paragraph 1, paragraph 4, paragraph 6, paragraph  
24          7, paragraph 8, paragraph 9, paragraph 12, and paragraph 13.

25          The motion, as it relates to the other paragraphs, is

1 denied without prejudice to the plaintiffs raising their  
2 objections at the time of trial.

3 We are now two minutes past our allotted time.

4 It was a pleasure to spend the afternoon with all of you.  
5 And I will see you later in the month.

6 We're adjourned.

7 MR. WELCH: Thank you.

8 MR. PATRICK CULLAN: Thank you, your Honor.

9 MR. JOSEPH CULLAN: Thank you.

10  
11 (Adjourned at 5:05 p.m.)  
12

13 (END OF REQUESTED PROCEEDINGS)  
14  
15

16 I certify that the foregoing is a correct transcript from  
17 the record of proceedings in the above-entitled matter.  
18

19 /s Brenda L. Fauber  
20 Brenda L. Fauber, RDR, CRR

January 8, 2016  
Date